



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

20110206Z

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

OCT 22 2010

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XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

SE:T:EP:RA:T2

Legend:

- Taxpayer A = XXXXXXXXXXXXXXXXXXXX
- Amount A = XXXXXXXXXXXXXXXXXXXX
- Amount B = XXXXXXXXXXXXXXXXXXXX
- Amount C = XXXXXXXXXXXXXXXXXXXX
- Date 1 = XXXXXXXXXXXXXXXXXXXX
- Date 2 = XXXXXXXXXXXXXXXXXXXX
- Date 3 = XXXXXXXXXXXXXXXXXXXX
- Date 4 = XXXXXXXXXXXXXXXXXXXX
- Year 1 = XXXXXXXXXXXXXXXXXXXX
- Financial Institution D = XXXXXXXXXXXXXXXXXXXX
- Financial Institution E = XXXXXXXXXXXXXXXXXXXX
- IRA X = XXXXXXXXXXXXXXXXXXXX
- IRA Y = XXXXXXXXXXXXXXXXXXXX
- Account F = XXXXXXXXXXXXXXXXXXXX

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Account G = XXXXXXXXXXXXXXX

Physician C = XXXXXXXXXXXXXXX

Physician D = XXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXX:

This is in response to your request dated January 19, 2010, as supplemented by correspondence dated June 9, 2010, and June 13, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 78, represents that he received a distribution from individual retirement account (IRA) X totaling Amount A, and a distribution from IRA Y totaling Amount B. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to his medical condition which impaired his ability to accomplish a timely rollover. Taxpayer A further represents that Amount C (total of Amount A and Amount B) has not been used for any other purpose.

Taxpayer A represents that on Date 1, he received a distribution of Amount A from IRA X which was maintained at Financial Institution C; and on Date 2, he received a distribution of Amount B from IRA Y which was maintained at Financial Institution D. Taxpayer A states that he intended to roll over both Amount A and Amount B into new IRAs within the 60-day period. However, shortly after receiving the distributions, he was hospitalized due to complications from brain cancer surgery. In addition, Taxpayer A suffers from a short term memory disorder.

Taxpayer A represents that in Year 1 he had surgery for brain cancer and received radiation and chemotherapy treatment. Taxpayer A also represents that prior to and during the rollover period he continued to receive treatments. Since his surgery, Taxpayer A has been unable to return to work and has been on disability. Documentation submitted shows that Taxpayer A suffered severe side effects and complications that prevented him from carrying out his normal activities. Statements from Physician C and Physician D submitted with Taxpayer's request indicate the severity of his medical problems and the extent of his treatment for these conditions.

Taxpayer A represents that he when he became well enough he contacted both Financial Institution C and Financial Institution D to complete the intended rollovers but was informed that the 60-day rollover period for both distributions had recently expired.

At that time, Taxpayer A still maintained possession of the uncashed distribution checks from IRA X and IRA Y. Subsequently, Taxpayer A was advised by an IRS Taxpayer Advocate to redeposit Amount A and Amount B into new IRAs. On Date 3, Taxpayer A established Account F and deposited Amount A into an IRA CD at Financial Institution C. In addition, on Date 4, Taxpayer A established Account G and deposited Amount B into an IRA CD at Financial Institution E.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A and Amount B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual

subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover within the 60-day period prescribed by section 408(d)(3) was due to his medical condition and treatments for such condition which impaired his ability to handle his financial affairs and accomplish a timely rollover.

Therefore, pursuant to section 408(d)(3)(i) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amount A from IRA X and Amount B from IRA Y. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A, which was deposited into Account F, and Amount B, which was deposited into Account G, will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of any amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (ID XX-XXXX)
at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Donzell Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose